



CITY OF KIRKLAND

Department of Public Works

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www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dave Snider, P.E., Capital Projects Manager
Pam Bissonnette, Interim Public Works Director

Date: March 21, 2013

Subject: Park Lane Pedestrian Enhancements – Project Update

RECOMMENDATION:

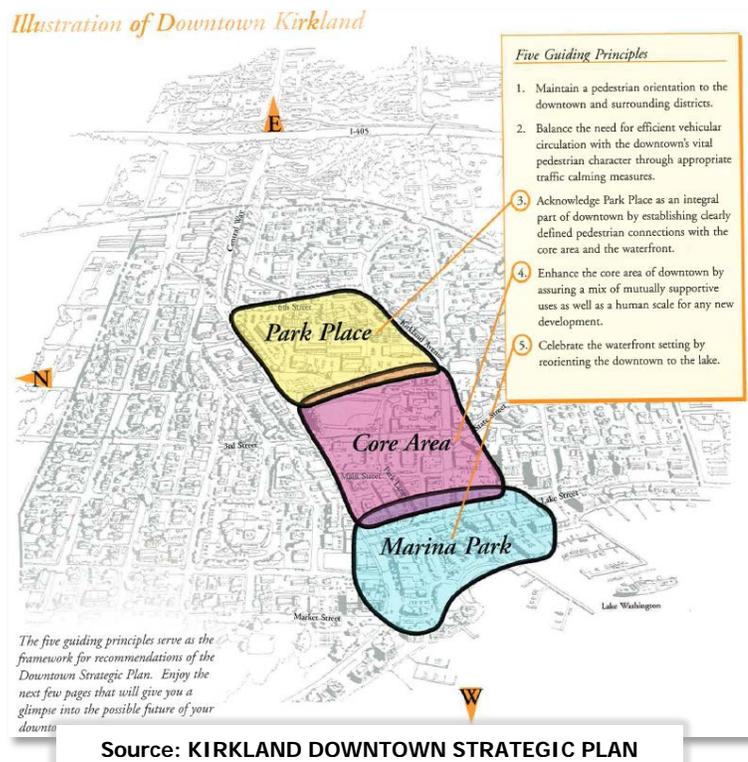
It is recommended that City Council:

- receives an update on the past public outreach efforts for the Park Lane pedestrian enhancements;
- authorizes the City Manager to sign a grant agreement with the Washington State Department of Ecology for the City to receive up to \$739,000 in storm water retrofit and Low Impact Development grant funds (Attachment A); and
- authorizes staff to proceed with the next steps of public outreach defining adjacent business and property owners' involvement in final design and construction mitigation for the Project.

BACKGROUND DISCUSSION:

In June of 2001, Kirkland City Council adopted the *Kirkland Downtown Strategic Plan (DSP)*, as developed by the Downtown Action Team. The five guiding principles contained within the *Strategic Plan* are: 1) Maintain a pedestrian orientation to the Downtown and surrounding districts, 2) Balance the need for efficient vehicular circulation with the downtown's vital pedestrian character through appropriate traffic calming measures, 3) Acknowledge Park Place as an integral part of the downtown by establishing a clearly defined pedestrian connection with the core area and the waterfront, 4) Enhance the core area of downtown by assuring a mix of mutually supportive uses as well as a human scale for any development, and 5) Celebrate the waterfront setting by reorienting the downtown to Lake Washington¹.

¹Kirkland Downtown Strategic Plan 2001



As defined in the *DSP*, Park Lane is at the center of the "Core Area" of Downtown Kirkland with its many positive pedestrian features. However, there are many pedestrian opportunities unrealized. For example, the strong pedestrian features of Park Lane are compromised by the lack of a consistent linkage between the core area, the Kirkland Transit Center, Peter Kirk Park, and Park Place.

It is important to note that in addition to being a strategic connection, Park Lane is aged and not in good condition¹. Park Lane will need to be substantially replaced within the next few years regardless of what "vision" for the street is selected. Because the corridor must be replaced with a significant investment, now is the time to make sure that investment becomes an asset for the community for decades into the future.

City Council approved funds in 2008 for a study to establish a vision for the Park Lane corridor between Lake Street and 3rd Street. In addition to the *DSP*, a secondary driver for the Study was the condition of the existing infrastructure along Park Lane -- aging pavement, failed concrete curbs and sidewalks, significant root and tree issues, inefficient street lighting, and the surface water conveyance system reaching the end of its life expectancy. Significant mature tree roots were (and are) lifting sidewalk panels creating hazardous walking conditions that require a high degree of maintenance efforts to correct. Final drivers for the Study were the pending redevelopment of the Kirkland Transit Center, the replacement of King County Wastewater Treatment Division sanitary sewer lift station at 3rd Street and Park Lane, and the eventual redevelopment of the Antique Mall property. Each provided added incentive to pursue an updated vision for the Park Lane corridor where reconstruction efforts would meet the City's strategic vision.

A key goal of the Park Lane Study was to explore and develop a community embraced concept for enhancements along Park Lane; a second goal was to identify various funding alternatives to accomplish the vision for the Corridor. After an extensive 18-month public involvement process, including the participation of many stakeholders represented by Park Lane business and property owners, Neighborhood Associations and other interested parties, the Park Lane Study was completed in January, 2010; City Council adopted the public preferred "Flexible Street" concept for Park Lane (Attachment B) at their February 2, 2010 meeting.

With the adopted vision in hand, staff submitted a grant application to the Washington State Department of Ecology (DOE) under its Storm Water Retrofit and LID Grant Program in 2010. On May 10, 2012, the City received notice that the Park Lane Project had been selected as a \$739K grant recipient through a legislative provision on the 2012 Supplemental Capital Budget. Staff provided City Council an update at their regular meeting of August 7, 2012 (Attachment C), and Council authorized staff to move forward with additional public outreach to appraise Park Lane business and property owners of the City's eligibility for the DOE grant funding and how the community could best be involved moving forward.

Park Lane Feedback

There are approximately 23 businesses on Park Lane between Lake Street and Main Street, and in late August, 2012, staff began conducting small group meetings with the businesses. Staff also met with the Executive Director of the Kirkland Chamber of Commerce and Kirkland

¹Kirkland Downtown Strategic Plan 2001

Downtown Association. At these meetings, the 2010 Flexible Street concept was reintroduced, and preliminary construction methodology was presented. Of the 23 business owners along Park Lane, staff directly communicated with a total of 19. In addition, a flyer (Attachment D) was mailed to 12 Park Lane property owners from Lake Street to Third Street inviting their input and feedback.

In general, business owners expressed concern over the potential direct construction impacts (e.g. reduction of customers and income during construction, equipment noise levels, limited access to store fronts, etc.) and the follow-on issues related to the adopted vision of Park Lane. Some expressed a concern that various community events such as the Wednesday Market have had a negative impact on individual sales of their front-line businesses – they oppose additional focus on events that the Flexible Street could facilitate.

Of the 19 businesses contacted, representative feedback can be divided into three categories, as shown below:

Summary of business owner outreach and level of project support

	No: Do not move forward with project at this time	Maybe: Move forward with project if conditions are met	Yes: Move forward with project at this time
Number of Businesses	4 (21.1%)* *1 of the 4 businesses has multiple owners	13 (68.4%)	2 (10.5%)
Level of Support for Park Lane Improvements	Reject the concept of a “Festival” street. Do not want Park Lane construction unless strictly necessary – do not see any necessity at this time. Only address tripping hazards and health of the trees. Leave the street with its current charm.	Support the implementation of Park Lane improvements under certain operational and construction conditions listed below.	Support the implementation of Park Lane improvements knowing construction comes with impacts.
Direction to move forward:	Keep Park Lane as it. Increase Park Lane ongoing maintenance. Fix tree/sidewalk problems one at a time as needed.	City of Kirkland to explore construction and operational conditions listed below.	Proceed with project.
Reasons not to move forward:	Do not like Festival Street. Revisit Project scope when times are better.	NA	NA

¹Kirkland Downtown Strategic Plan 2001

Multiple attempts to communicate with the 12 remote property owners along Park Lane have occurred since the inception of the visioning process in 2008. To date, approximately half of those businesses owners have actively participated by attending meetings, providing input or communicating in writing over the past five years.

The majority of the on-site business owners that were interviewed are willing to entertain the adopted pedestrian and street improvements for Park Lane provided that the following measures are incorporated into the Project:

Regarding Construction:

1. Businesses can remain open at all times.
2. Construction occurs during winter season. January was a popular month. One month construction duration was thought as the maximum acceptable duration for the western end of the corridor (between Lake Street and Main Street).
3. Other construction specific conditions include:
 - Construction is completed within the timeframe agreed to by City and business owners.
 - Construction contract language involves heavy fees should the contractor go beyond contract days.
 - Limit impacts by being open to round the clock construction (day and night). Business owners were concerned that construction delays would put them out of business.
 - Bids should be based not only on price but also schedule. The contractor must be qualified to meet construction conditions.
 - Establish a platform that supports open communication between contractor and business owners so that mitigation measures happen swiftly and efficiently.
 - Modify parking enforcement in the vicinity of Park Lane during construction to make it easier for customers to visit Park Lane.

Regarding the Festival Street Concept:

- Park Lane business owners want the ability to approve the type of festivals and nature of visiting vendors.
- Business owners want to ensure that festival activities on Park Lane:
 - i. promote their business and support their customer base; and
 - ii. do not prohibit or inhibit their customers from accessing their businesses.
- Flexible Street final design includes elements that enhance Park Lane businesses (i.e. patio spacing at key locations for outdoor dining or sidewalk sales).
- Regular Park Lane street maintenance after construction and prompt clean up after festivals and markets.
- Have a big celebration after construction is complete. High level marketing and advertising that attracts Kirkland residents and visitors from the greater Puget Sound region.

Estimated Project Costs and Funding Strategies

To date, the City has invested \$434K of capital improvement funds for scoping, planning and design development, sidewalk and lighting repairs, and the replacement of two trees along the Corridor (Phase I construction), and for the extensive community outreach to develop the overall vision for Park Lane. Engineering deliverables include a 30% design for the above ground improvements and a 100% design for the surface water system. Phase I construction, completed in 2010, included removal and replacement of damaged concrete sidewalk with temporary rubber sidewalk material at various locations and two new trees in Silva Cell tree well units were also installed. The Silva Cell units support vigorous tree growth while also providing immediate point-source water quality.

The overall total Park Lane Corridor Enhancements Project costs for all Phases of the Flexible Street concept is currently estimated to be \$2.99M, and includes four distinct elements: 1) the previously complete Phase I portion, 2) the King County Wastewater Treatment roadway and storm improvements adjacent to their lift station, 3) the replacement of the aging City water main, and 4) the City's Phase II improvements between the King County lift station and Lake Street. A more conventional approach to improving the street, without the added attributes of the Flexible Street, has not been designed but is expected to cost less but on the same order of magnitude as the Flexible Street.

As shown in Table 1 below, the *Total Cost* for the Flexible Street is \$2.99M with the City's current Project revenue at \$1.052M, including funds for Phase I elements (\$434K completed in 2010), the City share of storm water improvements associated with the King County Wastewater Lift Station Project (\$75K in current Surface Water CIP funds), the City's match for the DOE water quality grant (\$246K in current Surface Water CIP funds), and replacement of the existing Park Lane water main (\$297K in current Utility CIP funds). The King County lift station project adds an additional \$175K for providing full width flexible street improvements along the entire frontage of the lift station site, including the construction of new Low Impact Development improvements and new storm drainage infrastructure within the City's right-of-way between the new lift station and Main Street. Accepting the \$739K DOE grant would increase the overall revenue to \$1.966M, leaving a funding shortfall of \$1.024M, down from a previously identified amount of \$1.1M due primarily to the updated costs associated with the King County DNR Lift Station and the City's participation in surface water infrastructure enhancements associated with that project. In an effort to address the \$1.024M shortfall, the City recently submitted a \$1M State Capital Budget request for the completion of Park Lane. In the submittal, staff identified the total cost of the Project and emphasized the funding partners, including the City, DOE, and King County. A final decision on the request will not be announced until the end of the regular Legislative session in late April; however the City's request has received a favorable response.

"Conventional Alternative"

Staff has also conducted a very preliminary analysis of replacing Park Lane with a more conventional configuration than the flexible street. Initial estimates are that such a project would be slightly less, but would be within the same general range of cost as the current proposal. Much of the DOE grant would be also applicable to a more conventional approach, so accepting the grant does not drive a final decision about what replacement option to pursue. More work on this option could be done if Kirkland does not receive the \$1 million in requested funds from the state.

TABLE 1 PARK LANE PEDESTRIAN CORRIDOR ENHANCEMENTS

Element	Flexible Street	Fund Source (available)
BASE COST	\$ 1,763,000	
Phase II Enhancements		
a) LID and Storm	\$ 985,000	
b) New Lighting	\$ 108,000	
c) Street Furniture	\$ 134,000	
Sub-TOTAL	\$2,990,000	
FUNDING		
1) Phase I	(\$ 434,000)	Surface Water (SW/REET,2010)
	(\$ 75,000)	City Surface Water funds (Approved CIP)
2) KCDNR	(\$ 175,000)	King County DNR funds (2014)
3) Water main	(\$ 297,000)	City Water Utility (Approved CIP)
	(\$ 246,000)	DOE City Match SW funds (Approved CIP)
4) DOE Grant	(\$ 739,000)	State DOE (2013, 2014 & 2015)
Sub-TOTAL	(\$1,966,000)	
SHORTFALL	\$1,024,000	City currently seeking \$1M from State Legislature for completion of Park Lane Project.

Summary

In order to meet the Department of Ecology's fiscal reporting requirements, the City is being asked to return a signed Project Grant Agreement no later than April 12, 2012. At the same time, the outcome of the State Capital Budget grant request will not be known until the end of the State Legislative session, currently scheduled for April 26 (or later, dependent on an always possible session extension). To keep the Park Lane Project moving forward, staff recommends that City Council authorize the City Manager to sign the grant funding agreement with the Department of Ecology (Attachment A). While meeting the DOE reporting schedule is critical, the signing of the agreement does not formally obligate the City to proceed. Also, because the DOE grant is scalable, there are possible options for a modified Project scope if the City should not receive the State grant. Once the outcome of the State Capital Grant is known, staff will return to the City Council with a final project scope and plan for any resultant funding gap.

In the meantime, staff also recommends City Council authorization to continue with public outreach efforts with the Park Lane businesses and property owners to keep them informed on the status of the grants and to continue a dialog on an overall public involvement strategy to meet their concerns and expectations.

- Attachment A: DOE Agreement
- Attachment B: Flex Street
- Attachment C: Council Memo Aug 2012
- Attachment D: Park Lane Property Owner Flyer



DEPARTMENT OF
ECOLOGY
 State of Washington

**FY 2012 STORMWATER RETROFIT AND LID GRANT PROGRAM - PROVISIO
 FUNDING AGREEMENT**

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF KIRKLAND

GRANT AGREEMENT NUMBER

G1200606

PARK LANE PEDESTRIAN CORRIDOR ENHANCEMENTS

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FY 2012 STORMWATER RETROFIT AND LID GRANT PROGRAM - PROVISIO
Funding Agreement
Between
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
CITY OF KIRKLAND

THIS is a binding agreement between the state of Washington Department of Ecology (DEPARTMENT) and City of Kirkland (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT, who will carry out the requirements described in this agreement.

PART I. GENERAL INFORMATION

Project Title:	Park Lane Pedestrian Corridor Enhancements
Grant Number:	G1200606
State Fiscal Year:	FY 2012
Total Project Cost:	\$2,238,900
Total Eligible Cost:	\$985,333
DEPARTMENT Share:	\$739,000
RECIPIENT Share:	\$246,333
DEPARTMENT Maximum Percentage:	75 %

RECIPIENT Information

RECIPIENT Name:	City of Kirkland
Mailing Address:	123 5th Ave Kirkland, WA 98033
Fax Number:	425-587-3019
Federal Taxpayer ID Number:	91-6001255
PROJECT Manager:	Gina Hortillosa
Email Address:	<u>GHortillosa@kirklandwa.gov</u>
Phone Number:	425-587-3828
PROJECT Financial Officer:	Tracey Dunlap
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DEPARTMENT Contact Information

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Fax (509) 575-2809

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360-407-6570

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WA State Department of Ecology

Water Quality Program, FMS

P.O. Box 47600

Olympia, WA 98504-7600

CHECK ALL THAT APPLY:

- FY 2012 Stormwater Retrofit and LID Grant Program - Proviso (state funds):
 Yes Amount: \$739,000
Funded with Local Toxics Control Account – State
- Prior Authorization Granted: Yes If yes, Effective Date: **May 1, 2012**
 - Increased Oversight? Yes No

The effective date of this agreement is the Prior Authorization date.

This agreement expires: **May 1, 2015**.

Post Project Assessment date – three years after the expiration date of the agreement (see Post Project Assessment in Attachment I): May 1, 2018

PART II. PROJECT SUMMARY

This project will address water quality for the state of Washington. Park Lane drains to Lake Washington in the City of Kirkland. The completed project will improve stormwater management and pollutant removal along Park Lane through the use and installation of low-impact development techniques. The design concept will support Park Lane as a destination corridor where these techniques can be demonstrated to the public.

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PART III. PROJECT BUDGET

Park Lane Pedestrian Corridor Enhancements		
TASKS/ELEMENTS	TOTAL PROJECT COST	**TOTAL ELIGIBLE COST (TEC)
1 - Project Administration/Management	\$41,000	\$40,685
2 - Design Plans and Specifications	\$368,280	\$151,006
3 - Construction Management	\$117,900	\$55,000
4 - Construction	\$1,677,720	\$704,642
5 - Public Education and Outreach	\$34,000	\$34,000
Total	\$2,176,000	\$985,333
** The DEPARTMENT's Fiscal Office will track to the Total Eligible Cost.		
MATCHING REQUIREMENTS		
DEPARTMENT Share: maximum 75% of TEC		\$739,000
RECIPIENT Share: minimum 25% of TEC Cash Match \$246,333 Other types of in-kind, such as volunteer work <u>are not eligible</u>		\$246,333

PART IV. PROJECT GOALS AND OUTCOMES

- A. Financial Assistance Water Quality Project Goals: The overall goals of this project are focused on the protection of Lake Washington and include one or more of the following:
- Stormwater System Retrofit
 - Low Impact Development Best Management Practices (BMP)
 - Designated beneficial uses will be restored or protected, 303(d)-Listed water bodies restored to water quality standards, healthy waters prevented from being degraded.
- B. Water Quality and Environmental Outcomes: The following are the anticipated water quality and environmental improvements from the project.
1. Reduce peak flows in the sub-basin.
 2. Reduce stormwater pollutants including total suspended solids (TSS) and hydrocarbons.

3. Reduce the amount of pollution generating impervious surface.
- C. Performance Items and Deliverables: The following are the anticipated action items that will play an integral role in implementation of the project.
1. Construct low-impact development (LID) best management practices (BMPs), including bioretention facilities, permeable pavement, and pervious concrete surfaces.

PART V. SCOPE OF WORK

Task 1 - Project Administration/Management

- A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.
- B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement.
- C. The RECIPIENT must ensure this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project-related work.

Required Performance:

1. Effective administration and management of this grant project.
2. Timely submittal of all required performance items, progress reports, and financial vouchers.
3. Submit at least three hard copies and one electronic copy of the final project report after a draft has been approved by the DEPARTMENT.
4. Write and submit a one to two page summary of project accomplishments and outcomes at project completion, including pictures, to be published in the DEPARTMENT's Annual Water Quality Financial Assistance Report following the DEPARTMENT's water quality stories format.

Task 2 – Design Plans and Specifications

- A. The RECIPIENT will submit to the DEPARTMENT's Project Manager, a copy of the State Environmental Review Act (SEPA) Lead Agency's signed and dated SEPA determination.
- B. During the planning and design stage and prior to any ground disturbing activities, the RECIPIENT will submit to the DEPARTMENT's Project Manager one of the following:
 - a. If Cultural Resources Review (Executive Order 05-05) is complete, a copy of the letter of concurrence from the Department of Archaeology and Historic Preservation (DAHP) and correspondence from any tribes.
 - b. If Cultural Resources Review (Executive Order 05-05) is not complete, the RECIPIENT will submit a DAHP EZ-1 form to the DEPARTMENT's Project Manager to initiate review of project activities by DAHP and tribal governments.
- C. The RECIPIENT will submit two hard copies and one digital copy of the Pre-design report to the DEPARTMENT for review. At its discretion, the DEPARTMENT may request 60 percent complete design plans for review. Based on receipt of the Pre-design report or the 60 percent complete design plans, the DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans.
- D. Prior to advertising for contractor bids, the RECIPIENT will submit two hard copies and one digital copy of the final plans and specifications to the DEPARTMENT's Project Manager for review. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the plans and specifications for consistency with the appropriate design criteria and grant requirements. The RECIPIENT must justify significant deviations from the following:
 - 1. The appropriate guidance manual below depends on the region that your project is conducted:
Stormwater Management Manual for Western Washington (SWMMWW),
or the
Stormwater Management Manual for Eastern Washington (SWMMEW),
both can be found at:
<http://www.ecy.wa.gov/programs/wq/stormwater/tech.html>, or the
Low Impact Development Technical Guidance Manual for Puget Sound
found at: http://www.psp.wa.gov/downloads/LID/LID_manual2005.pdf, or
equivalent design manuals, or
 - 2. Equivalent manual as developed by the local jurisdiction and approved by the DEPARTMENT.
 - 3. Good engineering practices and generally recognized engineering standards.
 - 4. The project pre-design report.

- E. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal to the DEPARTMENT.
- F. The RECIPIENT will prepare and submit a projected construction schedule to the DEPARTMENT.
- G. The RECIPIENT will submit to the DEPARTMENT a current, updated construction cost estimate and updated project schedule, along with each plans and specifications submittal.
- H. The RECIPIENT will submit all pre-design figures and construction plans to the DEPARTMENT, reduced to 11" x 17" in size. The RECIPIENT may bind them with the specifications or related construction contract documents or bound as a separate document. All reduced drawings must be legible.
- I. The RECIPIENT will develop and submit an operations and maintenance plan for the stormwater treatment and low impact development (LID) features. The operation and maintenance plan will describe how the RECIPIENT will ensure project success consistent with the design manual used. The operation and maintenance plan must also address long term activities to assure ongoing pollutant removal and flow-control capability of the project. (See the *Stormwater Management Manual for Western Washington* Volume 5, Section 4.6.)

Required Performance:

- 1. Submit a copy of the signed and dated SEPA determination to the DEPARTMENT.
- 2. Submit a copy of either: 1) Letter of Concurrence from DAHP; or, 2) the DAHP EZ-1 form, for DEPARTMENT coordination on compliance with Executive Order 05-05.
- 3. Submit a Pre-design report to the DEPARTMENT.
- 4. Submit final plans and specifications to the DEPARTMENT, which includes the DEPARTMENT's Bid Specification Clauses inserts found at:
<http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html>

Task 3 – Construction Management

- A. The RECIPIENT will provide construction oversight and management of the project.
- B. The RECIPIENT will submit a detailed construction quality assurance plan to the DEPARTMENT before the start of construction. This plan must describe how adequate and competent construction oversight will be performed.
- C. The RECIPIENT will submit a construction schedule to the DEPARTMENT within 30 days of the start of construction. The construction schedule will be revised and/or updated whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the construction schedule to the DEPARTMENT with the

quarterly report. When changes in the construction schedule affect previous cash flow estimates, revised cash flow projections must also be submitted to the DEPARTMENT.

- D. Prior to execution, the RECIPIENT will submit eligible change orders that are a significant deviation from the DEPARTMENT reviewed plans and specifications in writing for DEPARTMENT review and approval for payment. All other change orders must be approved by the DEPARTMENT for technical merit and should be submitted within 30 days after execution. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to the DEPARTMENT for approval.
- E. Upon completion of construction, the RECIPIENT will provide to the DEPARTMENT's Project Manager a Stormwater Construction Completion Form signed by a professional engineer, indicating that the project was completed in accordance with the plans and specifications and major change orders approved by the DEPARTMENT's Project Engineer and shown on the Record Drawings. The Stormwater Construction Completion form can be found at:
<http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html>

Required Performance:

- 1. Submit the project construction quality assurance plan to the DEPARTMENT.
- 2. Submit the construction schedule to the DEPARTMENT.
- 3. Submit the signed and dated Declaration of Construction Completion Form to the DEPARTMENT.

Task 4 – Construction

- A. The RECIPIENT will construct, in accordance with the DEPARTMENT reviewed plans and specifications, bioretention facilities and LID features in the Park Lane Corridor.
- B. The RECIPIENT will submit to the DEPARTMENT's Project Manager a copy of the construction contract within 30 days of execution.

Required Performance:

- 1. Submit a copy of the bid documents (e.g. bid announcement, bid award, bid tabulations) to the DEPARTMENT.
- 2. Submit a copy of the construction contract to the DEPARTMENT.
- 3. Construct bioretention facilities.
- 4. Construct LID features.

Task 5 – Education and Outreach

- A. The RECIPIENT will conduct an extensive project outreach process. Outreach may include meeting with business owners, an informational letter and brochure mailing, and several informal presentations to business and community groups. The overarching goal of the public outreach will be to inform business owners, residents and customers of the potential impacts and how they can be mitigated.

Required Performance:

1. Provide informational public outreach.

PART VI. SPECIAL TERMS AND CONDITIONS

- A. Adjusted Construction Budget. The construction budget, as reflected in the agreement, will be adjusted once actual construction bids are received.

If the low responsive responsible construction bid(s) exceed the engineer's estimate of construction costs, the DEPARTMENT may approve, if funding is available and through formal amendment to this agreement, funding increases for up to ten percent of the engineer's original estimate.

If the low responsive responsible construction bid(s) come in lower than the engineer's estimate of construction costs, the DEPARTMENT may reduce the grant amount.

- B. Change Orders. If funding is available, the DEPARTMENT may approve, through formal amendment to this agreement, funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s).
- C. Documents for Review. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal for DEPARTMENT review.
- D. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project within four months of the signatory date, the DEPARTMENT reserves the right to terminate this agreement.
- E. Use of Force Account. In the event the RECIPIENT elects to use its own forces to accomplish eligible project work, the RECIPIENT acknowledges that it has the legal authority to perform the work and adequate and technically qualified staff to perform the work without compromising other government functions. The RECIPIENT must track and report the force account work submitted to the DEPARTMENT for reimbursement.

PART VII. ALL WRITINGS CONTAINED HEREIN

The following contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein:

- This agreement.
- Attachment I: General Project Management Requirements.
- Attachment II: General Terms and Conditions.
- The effective edition, at the signing of this agreement, of the DEPARTMENT's "Administrative Requirements for Ecology Grants and Loans" (Yellow Book).
- The associated funding guidelines that correspond to the fiscal year in which the project is funded.
- The applicable statutes and regulations.

No subsequent modifications or amendments of this agreement will be of any force or effect unless signed by authorized representatives of the RECIPIENT and the DEPARTMENT and made a part of this agreement, EXCEPT that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the grant budget. The DEPARTMENT or the RECIPIENT may change their respective staff contacts without the concurrence of either party.

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

IN WITNESS WHEREOF, the parties hereby sign this agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF KIRKLAND

KELLY SUSEWIND, P.E., P.G. DATE
WATER QUALITY PROGRAM MANAGER

MARILYNNE BEARD DATE
ASSISTANT CITY MANAGER

Approved As To Form:
Office of the Attorney General

ATTACHMENT I: GENERAL PROJECT MANAGEMENT REQUIREMENTS FOR THE FY 2012 STORMWATER RETROFIT AND LID GRANT PROGRAM

ARCHEOLOGICAL AND CULTURAL RESOURCES

The RECIPIENT must comply with all requirements listed in Executive Order 05-05 prior to implementing any project that involves ground disturbing activities.

The RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to the DEPARTMENT's project manager prior to any ground disturbing activities. The DEPARTMENT will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to fulfill Executive Order 05-05 requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Another agency's cultural resources review must have prior approval from the DEPARTMENT in order to be adopted to meet Executive Order 05-05 requirements for the project.

Any ground disturbing activities that occur prior to the completion of the Executive Order 05-05 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

<http://www.dahp.wa.gov/governors-executive-order-05-05>

EDUCATION AND OUTREACH

Before producing any new materials for the purpose of education and outreach the RECIPIENT must make sure similar materials do not already exist elsewhere. If similar materials exist, the RECIPIENT must request the use of the materials before time and resources are invested to duplicate materials that are already available.

The RECIPIENT must provide the DEPARTMENT up to two copies and an electronic copy on CD-ROM of any tangible educational products developed under this grant, such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements or gadgets, such as a refrigerator magnet with a message. If this is not practical, the RECIPIENT must provide a complete description including photographs or printouts of the product.

The RECIPIENT must also supply the DEPARTMENT with the names and contact information of local project leads.

If there are a significant number of people in the community that speak languages other than English, the RECIPIENT must produce all pamphlets, fliers, meeting notices, reports, and other educational and public outreach materials in English and in the other prevalent language.

FUNDING RECOGNITION

The RECIPIENT must inform the public about DEPARTMENT or the Environmental Protection Agency (EPA) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from the DEPARTMENT upon request.

INCREASED OVERSIGHT

If this project is selected for increased oversight (as indicated on page 3 of this agreement), the RECIPIENT must submit all backup documentation with each payment request submittal. In addition, the DEPARTMENT's Project Manager must establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

INDIRECT RATE

To acknowledge overhead costs, the RECIPIENT may charge an indirect rate of up to 25 percent based on employees' direct salary and benefit costs incurred while conducting project-related work. The DEPARTMENT's Financial Manager may require a list of items included in the indirect rate at any time.

MATCHING REQUIREMENTS

Cash Match Requirement. FY 2011 Stormwater Retrofit and LID Competitive grants and FY 2012 Statewide Stormwater Grant Program grants require cash match only.

Interlocal Match Requirement. The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements are consistent with all of the following:

- Terms of this grant agreement.
- The edition of "Administrative Requirements for Ecology Grants and Loans" that is effective at the signing of this agreement.
- Chapter 39.34 RCW Interlocal Cooperation Act.

MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

- a) Include qualified minority and women's businesses on solicitation lists.

- b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
- c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT must report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT (Form D), payments made to qualified firms. Please include the following information:

- a) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- b) The total dollar amount paid to qualified firms under this invoice.

PAYMENT REQUEST SUBMITTALS

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by the DEPARTMENT's Financial Manager. The DEPARTMENT's Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Supporting Documentation. The RECIPIENT must submit all payment request vouchers and supportive documentation to the DEPARTMENT's Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Required Forms.

<u>Any Match Combination</u>	<u>Cash Only Match</u>	<u>Where Applicable</u>
Form A19-1A (original signature)	Form A19-1A (original signature)	Form E (ECY 060-12)
Form B1 (ECY 060-3)	Form B2 (ECY 060-7)	Form F (ECY 060-13)
Form C1 (ECY 060-8)	Form C2 (ECY 060-9)	Form H (F-21)
Form D (ECY 060-11)	Form D (ECY 060-11)	Form I (ECY 060-15)

Reporting eligible costs. The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Reimbursements. Payments will be made on a cost-reimbursable basis.

POST PROJECT ASSESSMENT

The RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project three years after project completion.

The DEPARTMENT's Water Quality Program Performance Measures Lead will contact the RECIPIENT before the Post Project Assessment date to request this data.

The DEPARTMENT may also conduct site interviews and inspections, and may otherwise evaluate the Project, as part of this assessment.

PROCUREMENT

The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services.

PROGRESS REPORTS

The RECIPIENT must submit quarterly progress reports to the DEPARTMENT's Financial Manager and Project Manager. Payment requests will not be processed without a progress report.

Reporting Periods.

- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

Reporting Due Date. Quarterly progress reports are due 15 days following the end of the quarter.

Report Content. At a minimum, all progress reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement.

REQUIRED DOCUMENT SUBMITTALS

The RECIPIENT must submit the following documents to the DEPARTMENT as requested by the DEPARTMENT's Project Manager or Financial Manager:

- Draft project completion reports – one copy
- Electronic copy of final project completion report – one copy
- Final project completion reports – up to three copies
- Final project completion reports of statewide significance – up to 50 copies
- Educational products developed under this agreement – up to two copies

- Documents that require DEPARTMENT Approval – two copies (one for the DEPARTMENT and one for the RECIPIENT)
- Interlocal agreements – one copy for the DEPARTMENT's Financial Manager
- Professional services procurement agreements – 1 copy to the DEPARTMENT's Financial Manager

ATTACHMENT II: GENERAL TERMS AND CONDITIONS PERTAINING TO GRANT AND LOAN AGREEMENTS OF THE DEPARTMENT OF ECOLOGY

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits. Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.
2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages and Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the state of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the state of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within 90 days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted. Quarterly reports shall cover the periods January 1 through March 31,

April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within 30 days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer. The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work.

Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5. herein.
5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the

DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include

use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see <http://www.ecy.wa.gov/sustainability/>.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal. In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

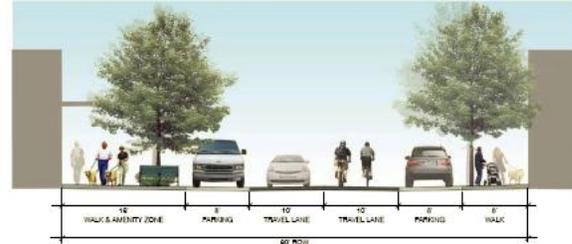
SS-010 Rev. 04/04

PREFERRED CONCEPT | FLEXIBLE FESTIVAL STREET | PLAN AND SECTIONS

SECTION A-A: WEST BLOCK (NOT TO SCALE)



SECTION B-B: EAST BLOCK (NOT TO SCALE)



- EXISTING TREE
- PROPOSED TREE
- RAIN GARDEN
- PEDESTRIAN AMENITY ZONE
- ROADWAY
- PEDESTRIAN WALKWAY
- PARKING BAND





CITY OF KIRKLAND

Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dave Snider, P.E., Capital Projects Manager
Ray Steiger, P.E., Public Works Director

Date: July 26, 2012

Subject: PARK LANE CORRIDOR ENHANCEMENTS – PROJECT UPDATE

RECOMMENDATION:

It is recommended that City Council receives an update on the Park Lane Corridor Enhancements Project, including a recent notification of an award of grant funding. It is also recommended that City Council authorize staff to renew public outreach efforts.

BACKGROUND DISCUSSION:

A study to establish the scope of Park Lane enhancements was first funded in 2008 as a part of the 2008-2013 Capital Improvement Program (CIP). The Study was the initial step in developing an overall strategy for addressing various issues along the Park Lane corridor, between Lake Street and 3rd Street South.

The primary drivers for the Study were the condition of the existing sidewalks along Park Lane, where significant mature tree roots were lifting sidewalk panels, together with other aging and deteriorating infrastructure such as pavement, curbs, lighting, and the surface water conveyance systems that are all reaching the end of their respective design lives. Additionally, the redevelopment of the Kirkland Transit Center, the replacement of King County Department of Natural Resources' (KCDNR) sanitary sewer lift station at 3rd Street South and Park Lane, and the anticipated redevelopment of the Antique Mall property provided an incentive to pursue an updated vision for the Park Lane corridor.

A key goal of the Study was to explore and develop a community embraced concept for enhancements along Park Lane (Attachment A); another goal was to identify various funding alternatives to accomplish the vision for the Corridor. Both goals were achieved and City Council adopted the preferred "Festival Street" concept for Park Lane at their regular meeting of February 2, 2010.

Study Chronology

The Park Lane Project was the subject of an extensive and robust public outreach process starting in the summer of 2008. A complete history of the public process and video of the public tour is available from the City Website at the following link: [Park Lane Enhancements Project](#). A general overview of the public process and timeframe is as follows:

Early Summer 2008

City hired a design consultant to assist staff in working with adjacent property owners, businesses, and interested citizens in creating a community vision for the future of Park Lane.

August 2008

A survey was mailed to all property and business owners along Park Lane and to other key stakeholders to obtain baseline information regarding attitudes and perceptions of Park Lane, as it looked at the time and what various aspirations were for what it could become in the future.

September 2008

Stakeholders convened to discuss the new Downtown Transit Center and to create a shared vision for the Corridor. Stakeholders participated in a design charrette to learn how Park Lane was first created through a Local Improvement District in 1974 followed by the development of concepts that could then be circulated for public comment. Three design concepts emerged from the stakeholders' long term vision for Park Lane. Concurrent with the development of the design concepts a detailed tree inventory of all trees along Park Lane was prepared.

October/November 2008

The stakeholders' three design concepts were presented to the public in a number of public meetings and venues. The information was put online along with forms for public comment. Over one hundred comments regarding the concepts were collected with the preferred concept being that of a "Festival Street". Under this design concept, the pedestrian, parking and roadway surfaces are all at the same level with pedestrian-only areas delineated through the use of textures, colors and/or physical objects such as decorative pavement, bollards and rain gardens. As a festival street, Park Lane, when closed for special events, would become a large pedestrian friendly plaza while still functioning as a through street and parking area at all other times.

February 2009

The City Council reviewed and endorsed the stakeholders' recommendation of the festival street concept (Attachment B). Design elements of the festival street concept were incorporated into the Kirkland Transit Center, as well as the roadway frontage restoration plans for the reconstruction of KCDNR's Downtown Kirkland Sewer Lift Station.

July 2009

A consultant arborist, the City's Urban Forester, the design consultant and staff met at Park Lane to re-assess trees and refine the festival street concept.

October 2009

The Tree 'report cards' were prepared and attached to 41 trees along Park Lane (see sample as Attachment C). The report cards were part of the ongoing community outreach plan to inform and engage stakeholders and other Park Lane users about the City's design process. The report cards included a "grade" and tree specific information such as species, diameter, comments on vigor, structure, health, and long term viability. On October 27, Stakeholders were invited to tour Park Lane with the City's Urban Forester, the consultant and City staff. During the tour, the tree report cards were explained and trees were compared among each other for purposes

of educating the stakeholders on tree health/structure/vigor. Trees with diseases were identified and signs of the disease were explained in detail by the City's Urban Forester.

The tour also provided the opportunity to discuss and explain the process of sidewalk buckling due to tree roots. Further, the proposed locations for surface water run-off collection and treatment using a new product known as Silva Cell (Attachment D) were shown on the tour. At the conclusion of the tour, stakeholders, consultants, and staff reconvened to review the preferred design option and discuss the proposed Phase I (discussed below) implementation plan.

January 2010

Staff presented a summary of the *Park Lane Study* to the Parking Advisory Board and to the Transportation Commission. Both groups supported the implementation of Phase I and the Festival Street concept. The Transportation Commission, however, recommended that the design development consider, among other issues, looking carefully at the amount of rain gardens being proposed and their correlation with parking operations, outdoor seating, and pedestrian movements along Park Lane.

Phase I

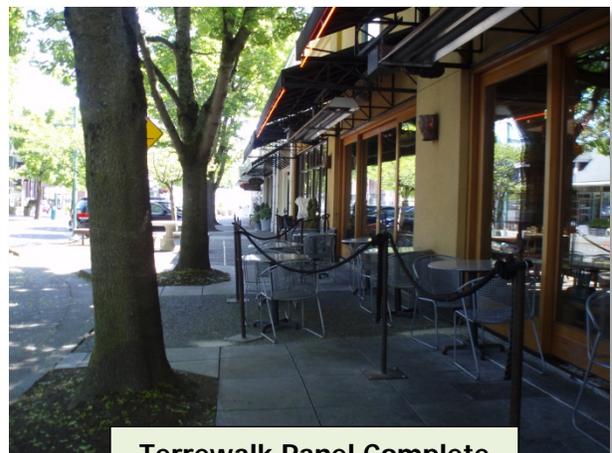
The Phase I improvements were complete in May of 2012 and included the installation of approximately 4,000 sf of Terrewalk panels (sidewalk panels made of recycled rubber and plastic) at various locations along the Corridor where the existing concrete sidewalk had buckled due to tree root uplifting.

Phase I also included the removal and replacement of two trees together with the installation of Silva Cell units to help prevent future sidewalk buckling. Silva Cell units are subterranean reinforced plastic frames that are filled with special soils to promote tree root growth. The frames fully support surface loads above while requiring less compaction efforts than conventional tree wells. This allows tree roots to go out and deeper as opposed to coming up towards the surface and adversely impacting sidewalks. This pilot use of Silva Cells for the City has been monitored and appears to be working well for its intended application; additional Silva Cell units will be incorporated into any future Park Lane improvements.

Concurrent with the implementation of Phase I, the City's consultant continued with the



Terrewalk Panel Install



Terrewalk Panel Complete

design of the Park Lane Festival Street concept to a 30% completion stage. The design efforts also brought the design of Park Lane storm system improvements to a 100% complete level, as well as to a 100% complete stage for the street frontage improvements being completed with the on-going KCDNR lift station project.

Funding/Grant Application

The visible attributes of the festival street concept along Park Lane include a barrier-free pedestrian amenity that is intended to support seasonal and annual events in Downtown. As conceived, the improvements will allow multi-modal access for businesses and customers at other times. In addition, the proposed improvements will provide significant surface water improvements in the Central Downtown core.

These proposed surface water improvements include many low impact development stormwater management elements such as tree canopy retention, the use of Silva Cells to support root growth and stormwater treatment, bioretention stormwater gardens, porous pavement, and rain gardens. Currently, there is no stormwater treatment along Park Lane and contamination from hydrocarbon compounds associated with motor vehicles is always present. Through the inclusion of significant stormwater management elements along Park Lane, improvements to water quality immediately upstream of Lake Washington will be accomplished.

To help fund these significant storm water quality/run-off improvements, staff submitted an August 31, 2010 grant application for the Washington State Department of Ecology's (DOE) Storm Water Retrofit and LID Grant Program. In order to ensure that funds are applied to the highest priority needs in the State, DOE staff evaluated and scored all of the project proposals. With all scores compiled a statewide priority list was developed and the Park Lane Pedestrian Enhancements Project application was selected as a top candidate. On May 10, 2012, the City received notice that the Park Lane Project had been selected as a grant recipient through a legislative provision in the 2012 Supplemental Capital Budget.

In order to advance the Grant to the next level, negotiations and a DOE funding agreement is required to be completed by the City before November 1, 2012. To accomplish this, DOE staff is requesting a confirmation letter from the City with a brief project status update and an indication that the City is still interested in moving forward with the Project.

Estimated Project Costs

A Funding Strategy for the Park Lane Corridor Enhancements Project was first presented to City Council at their meeting of February 2, 2010. At that time the Project was estimated to be \$2.2M in total costs, including the Phase I work previously completed (\$370K) plus the portion that will be built as a part of the KCDNR Lift Station project (\$170K); the second phase of the Project is currently listed as "Unfunded" within the Transportation element of the 2011-2016 CIP. In support of the DOE grant application, an updated engineer's estimate was produced along with an updated Funding Strategy Plan placing the current total project cost at closer to \$2.4M, including the same Phase I and KCDNR elements listed above.

With the possible receipt of \$739K in DOE grant funds, the Project balance remaining to be funded is nearly \$1.1M and, as per the current Funding Strategy, staff has identified possible

City matching fund sources such as the Annual Overlay Program, surface water reserves, the Annual Sidewalk Program, together with other miscellaneous sources (Attachment E). As a continued part of the Funding Strategy Plan, staff is pursuing other grant opportunities through the Transportation Improvement Board and the 2012 Pedestrian and Bicycle Safety Grant Program.

Conclusion and Recommendation

It is recommended that City Council authorize staff to begin a process to re-introduce the Park Lane Festival Street concept to the public, especially to the Park Lane business and property owners, in order to better gauge the level of support for Project implementation. A number of years have passed since the Park Lane Community Visioning process was concluded. As a result, there will be new Park Lane stakeholders who may not be fully up-to-date on the Project and the process that lead to the current design concept. The [Park Lane Visioning](#) website has remained active since 2008 with the Project currently listed as "unfunded" in the current CIP. With City Council's approval, staff will begin a new dialogue with the most immediately impacted stakeholders (Park Lane business and property owners) to identify current issues and to determine options for mitigating any future construction impacts. Staff will return to Council in October with results of the renewed public outreach and make a recommendation for completing grant negotiations with the DOE and funding strategies for the remaining \$1.1M gap. Staff will also provide the notice of grant information to the Kirkland Transportation Commission, as well as continue to pursue additional grant opportunities and funding options for City Council's future consideration.

Attachments (5)



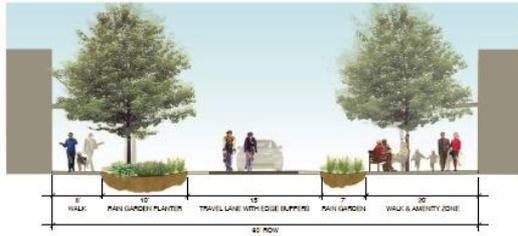
Project Area



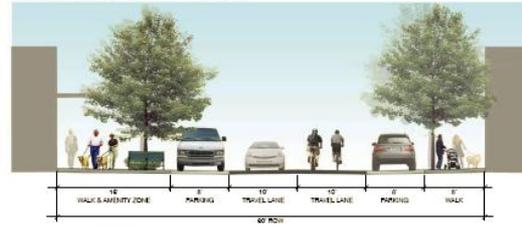
Flexible Festival Street Concept

PREFERRED CONCEPT | FLEXIBLE FESTIVAL STREET | PLAN AND SECTIONS

SECTION A-A: WEST BLOCK (NOT TO SCALE)



SECTION B-B: EAST BLOCK (NOT TO SCALE)



PARK LANE TREE INVENTORY

TREE REPORT CARD

Tree Number: 427
Species: Armstrong Red Maple
Diameter: 8.4"

A

Grade Definition:

A(Retain) B(Retain/Monitor) C(Monitor) F(Remove/Replace)

Tree Criteria:

- Vigor: Good
- Structure: Good
- Health : Very Good
- Impact on other trees/infrastructure: sidewalks/curb
- Long term viability: Very Good
- Notes: 4x4 cutout

Working to restore, enhance and protect the City of Kirkland's Tree Assets

Tour of Park Lane Trees with City Urban Forester

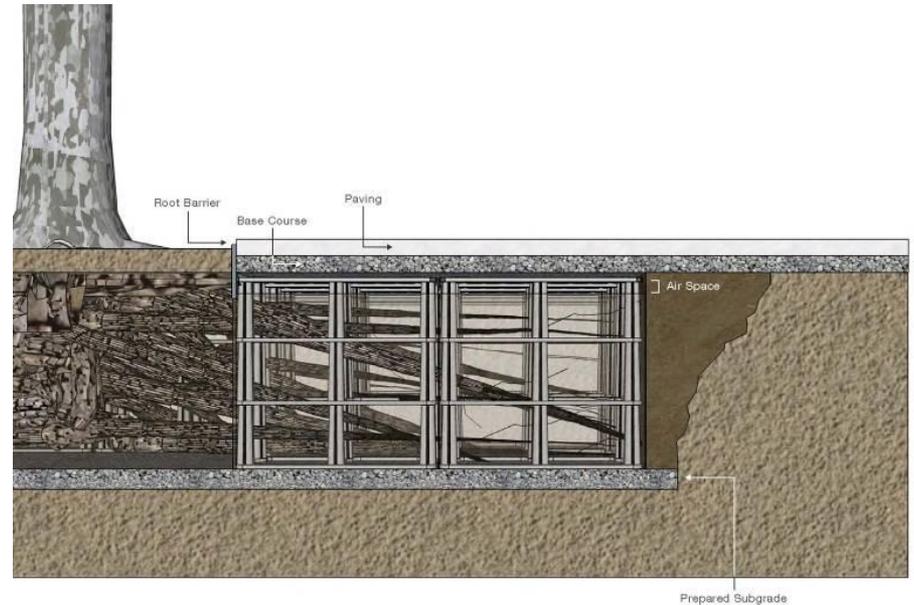
Tuesday October 27th (8:30 am – 9:15 am); Meet at Park Lane and Lake Street

Phase I Implementation Plan

9:15 am – 10:15 am; Zeek's Pizza (124 Park Lane)

For more information, contact Kari Page 425-587-3011 kpage@ci.kirkland.wa.us

Phase 1 – Silva Cell Units



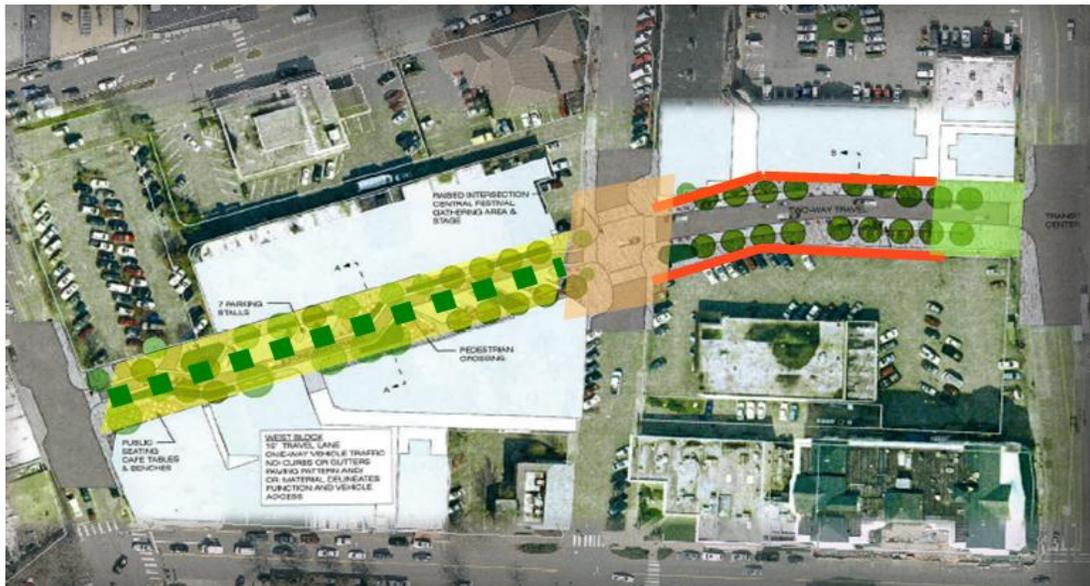
Silva cell units act as “suspended pavement”. The soil within the units requires less compaction, providing more void space for roots to grow.

Proposed Park Lane Pedestrian Corridor Funding Strategy

ATTACHMENT E

7/26/2012

PHASE	DESCRIPTION	Frontage (linear feet)	Total Estimate (2009)	Design (**)	Construction	Funding source
1	Replacement of damaged infrastructure (Terwalk rubber walkway panels, Silva Cell units, root pruning, conduit)	various	\$ 370,000	2009	2010 (Complete)	\$312K Transportation CIP \$58K Surface Water
2	King County DNR pump station street frontage Improvements	150	\$ 170,000	2009	2012 (ongoing)	Design funding is included in Phase 1. Construction will be completed by KCDNR; Park Lane crosswalk along west side of 3rd Street was constructed with Downtown Transit Center.
3	Festival Street Implementation: Installation of porous concrete sidewalks, new roadway, street furniture, patterned concrete, storm drainage and rain gardens.	800	\$ 1,106,746	2010 (30%)	TBD	\$739,000 DOE Grant Overlay Program Sidewalk Program Surface Water Program Centennial Program \$16K donated benches 2012 Pedestrian and Bicycle Safety Grant (Submitted July 2012) TIB (To be submitted August 2012)
4	Festival Street Implementation: Raised intersection at Main Street and Park Lane.	100	\$ 140,400	TBD	TBD	\$739,000 DOE Grant Overlay Program Sidewalk Program Surface Water Program Centennial Program \$16K donated benches 2012 Pedestrian and Bicycle Safety Grant (Submitted July 2012) TIB (To be submitted August 2012)
5 S	Antique Mall Redevelopment right of way improvements per Festival Street Concept	275	\$ 313,775	TBD	TBD	Same as above with redevelopment participation a possibility
5 N	Kirkland Square Redevelopment right of way improvements per Festival Street Concept	275	\$ 313,775	TBD	TBD	Same as above with redevelopment participation a possibility
TOTAL		1600	\$ 2,414,696			





Park Lane: Festival Street

August 30, 2012



Planning

Design

Construction

Complete

- **Create a lively public square in the heart of downtown**
- **Offer parking and vehicular access**
- **Promote festivals, outdoor concerts, street fairs, and markets**
- **Build a unique regional destination**

Thank you in advance for helping us make a good and informed decision about the future of Park Lane.

Dear Park Lane Property Owner:

Kirkland was awarded a State Department of Ecology (DOE) grant to help bring the community vision for Park Lane into reality. The grant does not cover all of the costs of construction, leaving over a million dollar gap to fully fund the project. The City is seeking additional grants from other state and federal agencies to fill the gap. However, by late this year, the City Council has a decision to make; whether to proceed with the DOE grant under the assumption that other grants will be awarded or come up with the remaining funds itself; or to decline the grant money from the State and push off the project indefinitely. If they accept the DOE grant, Kirkland will have until late 2014 to construct the project.



Example of a festival street

The DOE grant amount is \$739,000 with approximately \$1.1M remaining to fund. Before starting a larger process to gain public input on this decision, the Council wants to know what the business and property owners of Park Lane recommend. As everyone knows, no matter how desirable the improvements are, with improvements come construction impacts. We would greatly appreciate you taking a few minutes to meet with us so we can: 1) provide an overview of the Festival Street Vision, 2) answer questions about the construction timeline/impacts, and 3) hear your input on how the Council should proceed.

Questions we will be asking include:

1. What do you like or dislike about moving forward with the DOE grant and Park Lane improvements?
2. If we do not move forward, when do you think the City should start actively pursuing funding for Park Lane improvements?
3. Should certain conditions be met before moving forward?
4. If we do move forward, what mitigation measures should be considered for construction? In the end, we will be asking if you support moving forward at this time.

Please give us a call if you would like to provide input to the Council on this decision. Contact Kari Page, Neighborhood Outreach Coordinator, KPage@kirklandwa.gov (425) 587-3011 or Gina Hortillosa, Project Engineer, GHortillosa@kirklandwa.gov (425) 587-3828.

For More Information:

24-hour project information hotline/ Para más información*, 425-587-3838

Alternative formats available/711 (TTY Relay).

Gina Hortillosa, Project Engineer, GHortillosa@kirklandwa.gov, or 425-587-3828

Kari Page, Neighborhood Outreach Coordinator, KPage@kirklandwa.gov, or 425-587-3011

Web: www.kirklandwa.gov (search Park Lane).

(*Señale su idioma y llamaremos a un intérprete. El servicio es gratuito.)

City of Kirkland Department of Public Works • 123 Fifth Avenue • Kirkland, WA 98033



Park Lane: Festival Street

August 30, 2012

The Festival Street vision for Park Lane was created by the community through an extensive public process involving Park Lane business and property owners as well as the broader Kirkland community. The process began in August 2008 with the formal community recommendation being accepted by the City Council in February of 2009.

The vision is a street designed like a public square but would be open to traffic and provides parking.

It would encourage pedestrian use and create a more lively urban space where people want to shop, dine and relax.

It would promote flexibility for festivals, outdoor concerts, street fairs and markets.

There would be no curbs or gutters, no white lane dividers or sidewalks, and cars would be separate from pedestrians with street furniture, planters and rain gardens.



Example of a festival street



Example of a plaza rain garden

Traffic would meander through a tree lined plaza from Lake Street all the way to Third Street (Transit Center/Peter Kirk Park).

At the intersection of Main and Park Lane, the road would rise to create a raised intersection for central festival gatherings or a stage. Park Lane would become a vital shopping district and unique regional destination.



Example of pavement marking

Thank you for taking the time to help us make a good and informed decision about the future of Park Lane.

For More Information:

24-hour project information hotline/ **Para más información***, 425-587-3838

Alternative formats available/711 (TTY Relay).

Andrea Swisstack, Project Engineer, ASwisstack@kirklandwa.gov, or 425-587-3827

Kari Page, Neighborhood Outreach Coordinator, KPage@kirklandwa.gov, or 425-587-3011

Web: www.kirklandwa.gov (search street preservation).

(*Señale su idioma y llamaremos a un intérprete. El servicio es gratuito.)